

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-717

October 19, 1999

PUBLIC UTILITIES COMMISSION
Anti-Cramming Rule: Registration and Customer
Authorization Requirements, Complaint
Procedures, and Penalty Provisions for Billing
Agents, Service Providers, and Billing Aggregators

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT AND DIAMOND, Commissioners

I. INTRODUCTION

In this Notice, we open a rulemaking to prohibit service providers from placing a charge for a good or service on a customer's local telephone bill without first obtaining the customer's express authorization. This practice is commonly referred to as "cramming." This proposed rule requires that billing aggregators and service providers be registered with the Commission prior to placing charges for goods or services on a customer's local telephone bill, and prescribes a process for such registration. The rule also establishes a process for resolving customer complaints associated with cramming and prescribes penalties for violations of the rule.

II. BACKGROUND

The nature and variety of goods and services charged on customer telephone bills has changed dramatically over the past few years. Along with these changes, customers have become increasingly confused about the charges on their telephone bills. Unscrupulous companies can take advantage of this confusion by cramming unauthorized charges onto a customer's bill. Due to the complexity of the bill, it is often difficult for customers to notice a new charge that may have been "crammed" onto their phone bill.

The Legislature enacted Title 35-A, section 7107 so that the Commission could protect telecommunications customers from the misleading and abusive marketing practices associated with cramming. Section 7107 establishes a registration system for entities that place charges on customers' telephone bills. These registered entities are required to obtain explicit customer authorization for all charges that will appear on the customer's telephone bill. If the registered entities or the billing agents fail to comply with requirements of the rule, the Commission is authorized to impose administrative penalties of up to \$1,000 per violation and to revoke the registration of the service provider or billing aggregator.

Section 7107 requires the Commission to adopt rules to implement the statutory requirements and also specifically requires the Commission to:

1. Establish clear standards for interpreting and applying the state-of-mind standard applicable to billing agents who bill on behalf of service providers that are not properly registered with the Commission;
2. Define types of evidence that constitute sufficient evidence of customer authorization in a manner that imposes the least economic and technical burdens on customers and service providers; and
3. With regard to direct-dialed telecommunications services, provide that evidence that a call was dialed from the number that is the subject of the charge is sufficient evidence of authorization for the charge for that call.

We seek comment on whether our proposed rule adequately addresses these three specific directives.

Pursuant to section 7101(6), rules adopted under this section are routine technical rules, as defined in Title 5, chapter 375, subchapter II-A.

III. DISCUSSION OF INDIVIDUAL SECTIONS

A. Section 1: Definitions

Section 1 of the proposed rule contains definitions of terms used in the rule. The definitions are generally self-explanatory, with the exception of “customer” and “unauthorized charge.”

The proposed rule defines “customer” as any person who has agreed to receive, been accepted, and is receiving telecommunications service or has agreed to be billed for the same, including that person’s spouse or legal guardian. For businesses, “customer” also includes a person designated as the contact person for telecommunications services or by any other person with actual authority to purchase goods or services on behalf of the organization. We believe that authorizations for charges should be limited to the individuals described above because these are the individuals whose names appear on the account and/or who have the authority to make decisions regarding the telephone account subject to the billing charges. We seek comment on this definition.

The proposed rule defines an “unauthorized charge” as a charge for a service or product by a service provider who has not obtained or verified customer authorization as required in section 2 of this rule. An unauthorized charge also includes all charges generated or billed by service providers and billing aggregators who are not

registered with the Commission. For the purposes of this rule, a charge for a collect call will be deemed to be authorized by the person receiving the call at the dialed location.

B. Section 2: Charges for Goods and Services Appearing on a Customer's Telephone Bill

Section 2(A) prohibits service providers from billing a customer for goods or services that will appear as a charge on the customer's local telephone bill without first obtaining the customer's express authorization, including situations involving customer-initiated calls. This is to prevent cramming in situations where a service provider places an unauthorized charge on a customer's bill and simply claims that the customer requested the service over the telephone.

Title 35-A, section 7107(6) requires the Commission to define the types of evidence that constitute sufficient evidence of customer authorization in a manner that imposes the least economic and technical burdens on the customers and service providers. Section 2(B) requires service providers billing a customer for goods or services that will appear as charges on the customer's local telephone bill to verify the customer's authorization through a letter of agency or with a third party for oral authorizations. These verification methods are consistent with those contained in the Commission's slamming rule (Chapter 296) for carriers initiating a preferred carrier change, and thus both customers and carriers are familiar with these verification methods (or, in any case, will not have to learn two different methods). Therefore, we believe these methods will impose minimal economic and technical burdens on customers and carriers. We seek comment on whether these methods comply with the statute's requirements.

Section 2(C) provides that for situations where the call itself represents the service for which a charge is placed on the customer's local telephone bill, i.e. 900 number services, evidence that the call was placed from the number that is subject to the local phone bill shall be considered sufficient evidence of authorization for that call.

C. Section 3: Registration Requirements

Sections 3(A) and 3(B) require service providers and billing aggregators that wish to bill customers for goods or services by placing a charge on a customer's local telephone bill to register with the Commission.

Section 3(C) prohibits billing agents from "knowingly" billing a customer on behalf of a service provider or billing aggregator that is not registered with the Commission. The proposed rule defines "knowingly" as billing on behalf of a service provider or billing aggregator whose name does not appear on the Commission's list of registered service providers and/or billing aggregators at the time the charge appeared on the customer's local phone bill. The rule proposes to add new registrants to the registration list on the Commission's Internet website within two days of the effective date described in Section 4(D).

We believe that the definition for “knowingly” proposed in the rule represents a simple and verifiable means for administering the intent of the rule. We also believe that posting registrants on the Commission’s internet website within two days of their effective date provides billing agents with time to determine whether service providers or billing aggregators that wish to place charges for goods or services on bills issued by the billing agent are registered with the Commission prior to entering into a billing agreement with said providers or aggregators. We seek comment on the definition of “knowingly,” as well as the process and time frame for publicizing the registered service provider/billing aggregator list.

Section 3(C)(1)(b) of the proposed rule requires a billing agent that places a charge on a customer’s bill on behalf of a service provider and/or billing aggregator that is not registered with the Commission to immediately remove said charge from the customer’s bill and holds that agent liable to the customer for reimbursement of charges paid. Section 4 of the rule prescribes the process for such reimbursement.

Section 3(D) of the proposed rule requires bills issued by billing agents to comply with the Federal Communications Commission’s “Truth-in-Billing Rule.”¹ The FCC’s Truth-in-Billing rules require that customers receive bills that are organized clearly and highlight new charges or changes in service; that all charges are described fully and service providers identified; and that bills clearly and prominently disclose sufficient information so that customers can inquire about charges on their bills. Requiring bills issued by billing agents to comply with the FCC’s “Truth-in-Billing Rule” will significantly reduce or eliminate customer confusion regarding telephone bills and should provide customers the means to not only detect, but also resolve, instances of cramming. We seek comment on our proposed requirement regarding bill format.

Section 3(E) of the proposed rule provides that a telephone utility that is authorized by the Commission to provide telephone service in Maine is not required to be registered with the Commission. However, any telephone utility acting as a service provider as defined in Section 1(B)(3) must comply with Sections 2 and 5 for customer authorization procedures and resolving customer complaints. All affiliates or subsidiaries of certified telephone utilities who offer services other than telecommunications services must be registered with the Commission and abide by this rule. The purpose of this section is to prevent instances of cramming by affiliates and subsidiaries of the billing agent and to hold all service providers to the same regulatory standards.

¹In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, Docket No. 98-170 (F.C.C. April 15, 1999).

D. Section 4: Registration Procedures for Service Providers and Billing Aggregators

Section 4 of the proposed rule sets forth the procedures for registering service providers and billing aggregators with the Commission, the Commission's procedures for reviewing and/or rejecting applications, and the procedure for revoking registrations. As explained above, the proposed rule requires that all service providers and billing aggregators register with the Commission. Section 4(A) describes the registration procedure. Section 4(A)(4) provides that the Commission will provide notice of all approved applications on the Commission's Internet website, which will be updated periodically.

Section 4(B) states that the Commission will register an applicant unless the registration form is incomplete or it finds sufficient reason to conclude that the issuance is not in the public interest.

Section 4(C) sets forth the procedure the Commission will use to review all applications for registration and section 4(D) describes the effective dates of those registrations. Under the proposed rule, the Director of the Consumer Assistance Division (Director) will review all applications. Upon receipt of an application, the Director will first determine whether the application is complete. If the application is complete and the Director does not reject the application (as discussed below) within 14 days, it will become effective and remain effective until it is revoked or surrendered. Pursuant to section 4(E), if the Director finds that there is not sufficient information to properly evaluate the application, the Director may request additional information from the applicant within 14 days. If the additional information is provided and the Director determines that the application meets the Commission's requirements, the Director may then approve the registration.

Section 4(F) sets forth the procedures used when the Director rejects an application. Once an application has been rejected by the Director, it will not become effective unless expressly approved by the Commission. Section 4(F)(1) provides that the Commission shall offer a person whose registration has been rejected an opportunity for a hearing, at which the applicant may present other evidence in support of its application.

Section 4(G) sets forth both the process and standards for Commission revocation of a registration. To revoke a registration, the Commission must initiate an adjudicatory proceeding and provide the registrant with an opportunity to be heard regarding the specific incidents which are the subject of the Commission's revocation proceeding.

Section 4(G)(1) provides that the Commission may revoke a service provider's registration if the service provider has knowingly or repeatedly billed one or more customers for unauthorized service, engaged in other false or deceptive billing practices prohibited by other Commission rules, or who has operated in a manner

contrary to the public interest. A service provider will be presumed to have “knowingly” billed for unauthorized charges if it cannot verify the customer’s authorization for such charges pursuant to section 2 of the rule or if it has engaged any other false or deceptive billing practices prohibited by Commission rule. We believe this standard will provide us with an objective means of meeting the statute’s requirements. We do not believe it to be appropriate, efficient, or practicable to conduct an investigation into the subjective state of mind of the service provider at the time it forwarded the charge to the billing agent. We seek comment on our proposed standard.

Section 4(G)(2) provides that a billing aggregator’s registration may be revoked if it has knowingly or repeatedly forwarded a charge for a service or product to a billing agent on behalf of a service provider who was required to be registered with the Commission and who was not registered, if the billing aggregator has engaged in any other false or deceptive billing practices prohibited by Commission rule, or operated in a manner contrary to the public interest. The presence (or absence) of a service provider on the Commission’s list of approved service providers on the date the charges were forwarded to the billing agent will be dispositive of whether the billing aggregator’s actions were “knowing.” We seek comment on this standard.

Section 4(G)(3) provides that telephone utilities that are not required to register with the Commission may still be penalized for violations of this rule pursuant to Title 35-A (See e.g. 35-A M.R.S.A. § 1508).

Finally, Section 4(G)(4) provides that immediately following the revocation of a registration, the Commission shall provide notice of the revocation to all telephone utilities doing business in Maine and remove the registrant’s name from the Commission’s list of approved registrations.

E. Section 5: Complaint Procedures

Section 5 of the proposed rule sets forth the procedures used for resolving customers’ complaints that unauthorized charges have been included on their telephone bills. Section 5(A) provides that, upon notice from a customer that an unauthorized charge has been included in the customer’s telephone bill, the billing agent must immediately suspend collection efforts for that charge. This allows the billing agent time to investigate the claim without requiring the customer to pay the questionable charges. Section 5(A)(1)(b) then requires the billing agent to either cease collection efforts entirely with regard to the disputed charge or request evidence from the service provider that the customer authorized the service for which payment is sought. We do not require the billing agent to investigate every complaint because there may be circumstances where it is more cost-effective for the billing agent to cease collections rather than incur the costs of investigation.

Section 5(A)(1) provides that if the billing agent ceases collection efforts or if sufficient evidence of customer authorization is not presented to the billing agent within 30 days of a request for such information by the billing agent, the billing agent must

immediately remove any charges associated with the unauthorized service. In addition, the billing agent must refund to the customer any amounts paid for the unauthorized service that were billed by the billing agent during the six months prior to the customer's complaint or during any longer period for which the customer can prove the customer was billed by the billing agent for unauthorized services. Section 5(A)(2)(b) provides that such proof includes, but is not limited to, possession of past bills issued by the billing agent that contain the unauthorized charges. We seek comment on this standard and whether we should list any other types of specific evidence that might be used to prove that a customer was billed for unauthorized charges.

Section 5(B) provides that if the service provider is able to present sufficient evidence of customer authorization to the billing agent (as provided by Section 2 of this Rule), the billing agent may restore the charges on the customer's bill and reinstitute collection efforts.

Section 5(C) provides both the customer and the service provider with the right to appeal the billing agent's determination regarding the sufficiency of the customer's authorization. All appeals will be filed with the Commission's Consumer Assistance Division and will be handled as complaints to the Consumer Assistance Division. A party may appeal the decision of the Consumer Assistance Division to the Commission. We believe, however, that the procedures we have established in this rule should allow for the resolution of complaints by the service providers, bill aggregators, and billing agents themselves without the need for resort to the Commission. We seek comment on our proposed appeal process.

F. Section 6: Penalty

Section 6 sets forth the process used when the Commission determines that the imposition of an administrative penalty against violators of the rule is necessary. The proposed rule's language is almost identical to that of 35-A M.R.S.A. § 7107, mandating that, in order to impose a penalty, the Commission institute an adjudicatory proceeding and provide the alleged violator with an opportunity to be heard regarding the imposition and amount of the penalty.

Pursuant to Section 6(A), penalties may be imposed upon service providers who forward charges for unauthorized services, service providers or billing aggregators who forward charges to billing agents without first registering with the Commission, and billing agents who knowingly bill on behalf of service providers or billing aggregators who are not properly registered with the Commission at the time the billing agent's bill is generated.

Section 6(B) requires that the Director of the Consumer Assistance Division provide the Commission with a description of the violation and its severity and recommend a penalty based upon the criteria listed in section 6(C).

Section 6(C) allows for the imposition of an administrative penalty of up to \$1,000 per violator for violations arising out of the incident or complaint. Section 6(C) also clarifies that in certain situations where more than one entity is involved in a violation, e.g. a service provider and a billing aggregator, each entity in violation of the rule will be liable for a penalty up to \$1,000 per violation. In addition, Section 6(C) states that in situations where a service provider, billing aggregator, or billing agent is notified by a customer that an unauthorized charge was placed on the customer's bill and the provider, aggregator, or agent either fails to remove the charge or reinstitutes the charge to the customer's bill without customer authorization, each time the unauthorized charge reappears on the customer's bill will be considered a separate violation. The amount of the penalty assessed will be based on the severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts, the history of previous violations, and the amount necessary to deter future violations.

Section 6(D) allows the Commission to order the service provider or the billing aggregator to take corrective action if the Commission finds that a service provider or billing aggregator has repeatedly violated the rule. In addition, the Commission, if consistent with the public interest, may suspend, restrict or revoke the registration of the service provider or billing aggregator.

G. Section 7: Waiver or Exemption

Section 7 contains provides a procedure for persons subject to the rule to obtain a waiver of the requirements of the rule not required by statute. In addition to the Commission, the Director of Technical Analysis, the Director of Consumer Assistance, or the presiding officer assigned to a proceeding related to the rule may grant the waiver.

IV. FISCAL AND ECONOMIC EFFECTS

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of this rule.

V. RULEMAKING PROCEDURES

A public hearing on this matter will be held on November 16 at 9:00 a.m. at the Maine Public Utilities Commission. The Commission is located at 242 State Street in Augusta. The PUC does not discriminate in employment or in the provision of services because of race, creed, national origin, sex, political affiliation, religion, ancestry or disability. We will provide reasonable accommodation upon your request. (207)287-1598.

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments to the rule may be filed with the Administrative Director no later than November 29, 1999. Please refer to Docket Number 99-717, when submitting comments.

The Administrative Director shall send copies of this Order and the attached rule to:

1. All local exchange carriers and resellers of the same certified to operate in the State of Maine.
2. All persons who have filed with the Commission within the past year a written request for copies of this or any other Notices of Rulemaking;
3. The Office of the Public Advocate;
4. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
5. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies); and
6. The Coalition to Ensure Responsible Billing.

Accordingly, we

O R D E R

1. That the Administrative Director send copies of this Order and the attached rule to all the persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule.
2. That the Public Information Coordinator shall post a copy of this Order on the Commission's World Wide Web page <http://www.state.me.us/mpuc/>.

Dated at Augusta, Maine this 19th day of October, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond